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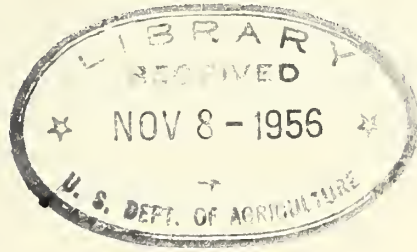
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Preliminary Statement

of

STATE WATER POLICIES

ON

DEVELOPMENT AND USE

December 20, 1955



STATE WATER POLICIES ON DEVELOPMENT AND USE

By

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This summary statement of the water policies of the respective states has been compiled from statute sources for the use of soil conservation districts, state soil conservation committees or boards, and state water resources study committees and commissions. The statement is preliminary in form and content with the thought that it may stimulate amplification of the material by specialists and study groups to reflect specific interpretations and decisions in applying basic water policies. In due course the statement may be released in more complete and final form.

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DECLARATION OF STATE POLICY

Alabama

Legislative Study Commission created in 1955 for purpose of making studies and recommendations on water policy.

No statutory provisions at present time.

Arizona

Arizona Code annotated 1939, Vol. 5, Chapter 75 Article 1, Sec. 75-101. Water of state public, and subject to beneficial use.

The water of all sources, flowing in stream, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, pond and springs on the surface, belongs to the public, and is subject to appropriation and beneficial use, as herein provided. Beneficial use shall be the basis, measure and limit to the use of water. Whenever the owner of a right to the use of water shall cease or fail to use the water appropriated for five (5) successive years, the right to the use shall cease, and the water shall revert to the public and be again subject to appropriation.

Arizona Constitution, Article 17, sec. 1 and 2, Water Rights.

Section 1. Common Law Rule - The common-law doctrine of riparian water rights shall not obtain or be of any force or effect in the state.

Section 2. Existing rights - All existing rights to the use of any of the waters in the state for all useful or beneficial purposes are hereby recognized and confirmed.

Citations: 45 Ariz. 61, 40 Pac (2d) 94, 39 Ariz. 65, 4 Pac (2d) 369, 47 Ariz. 484, 56 Pac (2d) 1337.

Arkansas

Legislative Study Commission created in 1955 for purpose of making studies and recommendations on water policy. 1955 Acts of Arkansas - Act 250 - Page 542.

California

Water Code, Division 1 Chapter 1 Deering Calif. Codes Water 2 100 - Fullst beneficial use of water resources: Prevention of waste or unreasonable use or method: Conservation: Limitation of right.

It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

Deering, Calif. Codes, Water Code, Division 1, Chap. 1. Section 101 - Attachment of Riparian rights to flow of stream or watercourses: construction.

Riparian rights in a stream or watercourse attached to, but to no more than so much of the flow thereof as may be required or used consistently with this and the next preceding section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing in this or the next preceding section shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which his land is riparian under reasonable methods of diversion and use, or of depriving any appropriator of water to which he is lawfully entitled.

Deering, Calif. Codes, Water Code, Division 1, Chap. 1. Section 102 - Water State Property: Acquisition of right to use water by appropriation.

All water within this State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law.

Deering, Calif. Codes, Water Code, Division 1, Chap. 1. Section 103 - Law unchanged by Code enactment.

In the enactment of this code the legislature does not intend thereby to effect any change in the law relating to water rights.

Deering, Calif. Codes, Water Code, Division 1, Chap. 1. Section 104 - Paramount interest of people in water: Determination as to diversion or control.

It is hereby declared that the people of the State have a paramount interest in the use of all the water of the State and that the State shall determine what water of the State, surface and underground, can be converted to public use or controlled for public protection.

Deering, Calif. Codes, Water Code, Division 1, Chap. 1. Section 105 - Protection of Public interest, and determination as to development.

It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit.

Deering, Calif. Code, Water Code, Div. 1, Chap. 1. Section 106 - Use for domestic purposes and for irrigation.

It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.

Deering, Calif. Codes, Water Code, Div. 1, Chap. 1. Section 106.5 - Legislative policy is to municipal water rights.

It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses, but that no municipality shall acquire or hold any right to waste water, or to use water for other than municipal purposes, or to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by others subject to the rights of the municipality to apply such water to municipal uses as and when necessity therefor exists.

Deering, Calif. Codes, Water Code, Div. 1, Chap. . Section 107 - Declaration not exclusive, other or further declarations.

This declaration of the policy of the State in this chapter is not exclusive, and all other or further declarations of policy in this code shall be given their full force and effect.

Citations: 40 P. 2d. 486, 491-494, 798-499 (1935), enacted in 1943. .
Rancho Santa Margarita v. Vail 11 c 2d 501, 81 P 2d 533. 68 F Supp.
279, 33 C 2d 908.

Collateral Reference: Cal. Jur. Waters 8 et seq. McK Dig
Waters 1 et seq., Am. Jur Waters 56, 240 et seq., 291 et seq., Cal Jur
Waters 8 et seq., McK Dig Waters 1 et seq.

Cross References: Cal. Jur. Waters 308-310, McK Dig Waters 73 et seq.
189, Am. Jur. Waters 343, 345, 348.

Colorado

Constitution of Colorado, Article XVI, Sec. 5 and 6, Colorado Revised Statutes 1953, Vol. 1, page 384 and 385.

Section 5 - Water of Streams Public Property.

The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

Section 6 - Diverting Unappropriated Water - Priority Preferred Uses.

The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have preference over those claiming for other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes.

Citations: 192, P. 2d 891, 156 P. 140, 128 F. 776, 64 P. 212, 57 P. 2d 894, 139 P. 2, 48 P. 828, 245 P. 493, 279 P. 44, 129 P. 220, 21 P. 1028, 191 P. 101, 262 P. 517, 85 P. 313, 64 P. 184, 89 P. 2d 1012, 96 P. 2d 836.

Connecticut

No statutory provisions for water rights exists.

Delaware

Legislative Study Commission created in 1955 for the purpose of making studies and recommendation on water policy.

Florida

Florida Statutes - 1955 Session Laws, pages 306, 307 and 308. Chapter 29748 - Senate Bill No. 377.

An Act declaring the water policy of the state; creating and establishing a water resources study commission to conduct a study and report its findings and recommendations to the next regular session of the Legislature, providing an appropriation; and providing an effective date.

Be it enacted by the Legislature of the State of Florida:

Section 1. The following are declared to be policy of the State of Florida:

(a) Waters in the state are a natural resource.

(b) The ownership, control of development and use of waters for all beneficial purposes is within the jurisdiction of the state which in the exercise of its powers may establish measures to effectuate the proper and comprehensive utilization and protection of the waters.

(c) The changing wants and constantly increasing needs of the people of the state may require the water resources of the state to be put to beneficial uses to the extent of which they are most reasonably capable and therefore the waste and unreasonable use of water should be prevented and the conservation of water should be accomplished.

(d) The public welfare and interest of the people of the state require the proper development, wise use, conservation and protection of water resources together with the protection of land resources affected thereby.

(e) The state should make a careful and comprehensive study before enacting any legislation affecting the matters heretofore stated in this Act.

Georgia

Legislative Study Commission created March 3, 1955 for the purpose of making studies and recommendations on water policy.

Idaho

Idaho Statutes - 1947 - Vol. 8 Title 42, page 1 et seq.

42-101. Nature of property in water - Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose, and the right to the use of any of the waters of the state for useful or beneficial purposes is recognized and confirmed; and the right to the use of any of the public waters which have heretofore been or may hereafter be allotted or beneficially applied, shall not be considered as being a property right in itself, but such right shall become the complement of, or one of the appurtenances of, the land or other thing to which, through necessity, said water is being applied; and the right to continue the use of any such water shall never be denied or prevented from any other cause than the failure on the part of the user thereof to pay the ordinary charges or assessments which may be made to cover the expenses for the delivery of

such water. (1900, p. 191, sec. 9b; reen. R. C. & C. L. sec. 3240; C. S. Sec. 5556; I.C.A. sec. 41-101.)

History of Irrigation Law.

Two Acts passed in 1881 were the basis of the irrigation law of the state for a number of years. The Act of February 10, 1881 (laws 1881, p. 267) regulated the appropriation of water, requiring the posting of notices at the point of diversion and the recording of the same as in the case of mining claims, and prescribing the manner of procuring rights of way by proceedings before the county commissioners. The Act of Feb. 7 (Laws 1881, p. 272) regulated the distribution of water through water-masters whose election and duties were therein provided for. The provision of these two acts were substantially perpetuated in R. S., sec. 3155, 3205.

A new Act covering the appropriation of water and providing for fixing water rates by the district court was enacted in 1895 (Laws 1895, p. 174). This act was in part reenacted and in part repealed by the act of Feb. 25, 1899 (Laws 1899, p. 380) which added several new provisions to the law and gave to the county commissioners jurisdiction to fix water rates. The appropriation provisions of the 1899 law were repealed by Laws 1903, p. 223, which, for the first time, departed from the old system of posting and recording notices of appropriation, placing the matter in the hands of the state engineer. The act of 1903, with such sections of the 1899 and earlier laws as are still in force, comprise the basis of this title, which has been frequently amended since the enactments of the R. C.

1919, ch. 8, sec. 38, p. 65 (67.3401 herein) abolished the office of state engineer, and sec. 37 of the same act (67.3301 herein) vested his powers and duties in the department of reclamation. The substitutions of offices and officials authorized by that act have been made accordingly, the text of the preexisting law not being changed except in so far as necessary in making substitutions.

Appropriation for Beneficial Use.

If one appropriates water for beneficial use and then sells, rents, or distributes it to others who apply it to such beneficial use, he has a valuable right which is entitled to protection as property right. Murray v. Public Utilities Comm. 27 Idaho, 693, 150 Pac. 47, P. U. R. 1915F, 436, L. R. A. 1916F, 756.

Appropriation of Water.

Language here indicates that water is subject to appropriation only when flowing in its natural channel, and must be appropriated therefrom. *Rabido v. Furey*, 33 Idaho, 56, 190 Pac. 73.

Spring situation wholly on government homestead entry is source from which valid water appropriation may be made, with entryman's consent. *Short v. Praisewater*, 35 Idaho 691, 208 Pac. 844; *Keiler v. McDonald*, 37 Idaho 573, 218, Pac. 365.

Where an appropriator diverts and applies water on his own land to a beneficial use without the initiation of the right in trespass, and diverts the water, continuously and uninterruptedly, for such beneficial use, his right by virtue of appropriation is complete. *Jones v. McIntire*, 60 Idaho 338, 91 Pac. (2d) 373.

Compliance with Statutory Requirements.

When statutory requirements are complied with, appropriator of water gains right to use of water. *Bennett v. Twin Falls North Side Land & Co.* 27 Idaho 643, 150 Pac. 336.

The statutes, with respect to proof of application for beneficial use of public water and allotment of rights appurtenant to land, have application only where there is a full compliance with such statutes; otherwise the right to assert the doctrine of relation is cut off. *Bachman v. Reynolds Irr. Dist.* 56 Idaho 507, 55 Pac. (2d) 1314.

Constitutionality.

This section is in harmony with Const. art. 15, sec. 1. *Adams v. Twin Falls-Oakley Land & Co.* 29 Idaho 357, 161 Pac. 322; *Short v. Praisewater*, 35 Idaho 691, 208 Pac. 844.

Contracts for Water Rights.

Contract between irrigation company and purchaser of water rights to the effect that no water should be delivered to the latter until maintenance assessments for current year have been paid to company is valid. *Parrott v. Twin Falls Salmon River Land & Co.* 32 Idaho 759, 188 Pac. 451.

Contractual Right to Refuse Water Delivery.

Contractual provision empowering company to refuse delivery of water during default by user in payment other than for maintenance is

contrary to public policy and void. Adams v. Twin Falls-Oakley Land & Co. 29 Idaho 357, 161 Pac. 322.

Irrigation company is without authority to withhold water delivery on account of nonpayment of past due assessments. Reynolds v. North Side Canal Co., 36 Idaho 622, 213 Pac. 344.

Contractual Right to Take Water.

Where state contracts provide for storage dams, permittee is authorized to take all waters up to amount specific in contract, whether or not it includes flood or winter flow of granted streams. Big Wood Canal Co. v. Chapman, 45 Idaho 380, 263 Pac. 45.

Delivery to Outsider.

State may forbid appropriation and diversion of its public waters for application and use beyond confines of state and within the jurisdiction of another state. Walbridge v. Robinson, 22 Idaho 236, 125 Pac 812, 43 L.R.A., N.S. 640.

Delivery of water to outsider where same is not needed by user in district is not dedication. Yaden v. Gem Irr. Dist. 37 Idaho 300, 216 Pac. 256.

Evidence of Compliance with Statute - Sufficiency.

Where an irrigation district has not proven the issuance of a permit by the Department of Reclamation, nor made a showing of a compliance with the law with respect to appropriation, it is not entitled to prove a beneficial using of an additional amount of water from a natural stream. Bachman v. Reynolds Irr. Dist. 56 Idaho 507, 55 Pac. (2d) 1314.

Evidence Showing Diversion and Use.

Evidence in the cited case supported a finding that the owners of an irrigation ditch, who had diverted water from a certain creek for many years, had established a right thereto by actual diversion and use. Bachman v. Reynolds Irr. Dist. 56 Idaho 507, 55 Pac. (2d) 1314.

Interstate Streams.

Under the doctrine of appropriation, one state may acquire priority over another state in the use of water of an interstate stream. Weiland v. Pioneer Irr. Co. 259 U.S. 498, 66 L. ed. 1027, 42 Sup. Ct. 568 (appro-

priation from stream flowing through Colorado and Nebraska).

Laches Applied to Purchaser of Land with Connected Water Rights.

The equitable principle of laches and negligence barred the correction of water right decree which had been entered 16 years prior and 7 years had elapsed after petitioner had purchased the land, during which time the rights of other owners of water rights had intervened. Albion Idaho Land Co. v. Adams, 58 Fed. Supp. 579.

Mandamus to Compel Delivery.

Upon proper demand and tender of payment of assessment for current year, stock-holder may compel delivery of water by writ of mandamus. Reynolds v. North Side Canal Co. 36 Idaho 622, 213 Pac. 344.

Nature of Water Right.

Clause of this section which provides that right of water user shall not be considered as being a property right in itself but shall become a complement, or one of the appurtenances, of the land on which water is applied, does not deprive or divert right to use of water of any of the qualities or elements of property it otherwise might have. Hard v. Boise City Irr. & Co. 9 Idaho 589, 76 Pac. 331, 65 L.R.A. 407.

Not Applicable to Waste Water.

This section does not apply to waste water from irrigation system although such water may be flowing in natural channel of stream. United States v. Haga, 276 Fed. 41.

Percolating Waters.

This section does not include percolating waters. Public Utilities Comm. v. Natatorium Co. 36 Idaho 287, 211 Pac. 533.

42-102. Measurement of water. - A cubic foot of water per second of time shall be the legal standard for the measurement of water in this state, and it shall be the duty of the department of reclamation to devise a simple, uniform system for the measurement and distribution of water. (1899, p. 380 Sec. 1, 21; reen. R.C. & C.L., Sec. 3241; C.S., Sec. 5557; I.C.A. sec. 41-102).

42-1501. Declaration of policy. - By the passage of this act the legislature declares its intention to meet, so far as possible, a state-wide need for the conservation development and utilization of water for irrigation purposes.

It is common knowledge that farming by irrigation is Idaho's greatest industry; that the natural flow of our streams during the irrigation season is insufficient to adequately irrigate the lands now under cultivation; that during recent years drouth has caused tremendous losses in agricultural and livestock industries, which have seriously and adversely affected all other business and industry; that these losses and resulting distress could have been minimized, and in many instances prevented had the available water supply been stored and made available for irrigation; that disaster confronts many heretofore prosperous and self-sustaining communities unless immediate steps are taken to provide supplemental water for irrigation; that many of these communities are unable financially to make necessary surveys, examinations and investigations to determine the feasibility and cost of providing supplemental water. It is therefore declared that the public welfare, interest and necessity of our people require that the state create an agency for the purpose of making surveys, examinations and investigations to determine where and how water may be stored, conserved, developed and utilized, and to formulate plans for the construction of necessary dams or other methods for the development and conservation of water, and determine the cost thereof, and how the same may be financed, and that such state agency shall be regarded as performing a governmental function. (1937, ch. 95, sec. 1, p. 132.)

Compiler's notes: The words "this act" refer to S. L. 1937, ch. 95, which is compiled hereinas sec. 42-1501 - 42-1505.

Sections 2 and 3 of S.L. 1937, ch. 95 were repealed by S.L. 1939, ch. 7, sec. 2.

Section 1 of S.L. 1939, ch. 27, compiled herein as sec. 42-1506, provides as follows: "The department of reclamation of the state of Idaho shall in every respect be the successor to and shall exercise all the rights, powers and duties heretofore by law conferred upon the state water conservation board. All records, files, data, reports, equipment and other property now in possession of or pertaining to the department of reclamation of the state of Idaho."

Comp. Leg. N.D. Rev. Code 1943, sec. 61-0201 et seq.

Indiana

1955 Session Laws. Senate Bill No. 6.

A bill for an act concerning water rights in natural surface waters in the State of Indiana, declaring and establishing the policy of the State of Indiana regarding water rights in natural surface waters, providing for a committee to make a survey and study of the laws regarding water rights and water management, and making an appropriation.

Whereas, due to the vastly increased use of water for domestic, agricultural, industrial, recreational and related purposes, and the prospect for continued expansion of such uses; and

Whereas, the general assembly recognizes the need for the utmost efficiency in the beneficial management of surface water resources for the best interests of all the people of the State of Indiana; and

Whereas, the well-being of individuals and the protection of property require that the power inherent in the people of Indiana be utilized to promote and to regulate surface water resources for the proper beneficial uses:

Therefore

Be it enacted by the General Assembly of the State of Indiana:

Section 1. It is hereby declared that the general welfare of the people of the State of Indiana requires that surface water resources of the State be put to beneficial uses to the fullest extent and that the use of water for non-beneficial uses be prevented, and that the public and private funds, for the promotion and expansion of the beneficial uses of surface water resources, shall be invested to the end that the best interests and welfare of the people of the state will be served.

Section 2. Water in any natural stream, natural lake or other natural body of water in the State of Indiana which may be applied to any useful and beneficial purpose is hereby declared to be a natural resource and public water of the State of Indiana and subject to control and/or regulation for the public welfare as hereinafter determined by the general assembly of the State of Indiana. Diffused surface water flowing vagrantly over the surface of the ground shall not be regarded as public water and the owner of the land on which such water falls, pools, or flows, shall have the right of its use.

Section 3.

(1) The owner of land contiguous to or encompassing a public water course shall at all times have the right to the use of water therefrom in the quantity necessary to satisfy his needs for domestic purposes, which shall include, but not be limited to, water for household purposes, drinking water for livestock, poultry and domestic animals. The use of water for domestic purposes shall have priority and be superior to any and all other uses.

(2) The owner or group of owners of land contiguous to or encompassing a public water course, or any person, firm, corporation, unit of government or association for irrigation or other purposes owning such land, shall have the right to impound such water behind a dam in the natural stream bed or on its land or by pumping or diverting such water from a stream or lake to a reservoir when the flow in the stream or the level of the lake is in excess of existing reasonable uses at the time of such impoundments. An obstruction to be placed across a natural stream shall include an outlet facility for release of water which the owner is not entitled to use under this act, and the owner shall operate the outlet in accordance with this provision.

(3) Public utilities, persons, firms, corporations, units of government or associations for irrigation or other purposes which create additional stream volumes by releases from impoundments built and financed by them for their purpose or purposes, shall have the right to use of such increased flowage at all times, the same to be determined by well recognized engineering computations. Riparian owners shall have no rights in such increased flowage beyond normal stream flow.

Illinois

1953 Statutes, pages 1351-1352.

An Act creating the State Water Resources and Flood Control Board and defining its powers and duties. Approved July 17, 1945. L. 1945, p. 383.

Be it enacted by the people of the State of Illinois, represented in the General Assembly:

200.1 Beneficial use - Prevention of waste. Section 1.

It is hereby declared that the general welfare of the people of this State requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be

exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.

Iowa

Legislative Study Commission created April 21, 1955 for purpose of making studies and recommendations on water policy.

Kansas

1953 Statutes, Chapter 82a, Article 7, p. 702, K.S. page 2749.

702. Dedication of Use of Water - All water within the State of Kansas is hereby dedicated to the use of the people of the State, subject to the control and regulation of the state in the manner herein prescribed.

703. Water may be Appropriated Subject to Vested Rights. Subject to vested rights, all waters within the state may be appropriated for beneficial use as herein provided. Nothing in this act contained shall impair the vested right of any person except for nonuse.

707. Principles Governing Appropriations. (a) Surface or ground waters of the state may be appropriated as herein provided. Such appropriation shall not constitute absolute ownership of such water, but shall remain subject to the principle of beneficial use. (b) Where appropriations of water for different purposes conflict they shall take precedence in the following order, namely: Domestic, municipal, irrigation, industrial, recreational and water power uses. (c) As between appropriators, the first in time is the first in right. The priority of the appropriation shall date from the time of the filing of the application therefor in the office of the chief engineer. (d) Appropriation in excess of the reasonable needs of the appropriations shall not be allowed.

717. Beneficial Purpose; Termination for Nonuse. All appropriations of water must be for some beneficial purpose. The right of the appropriator and his successors to the use of water shall terminate when he ceases for three years or more, to use it for the beneficial purposes authorized in his permit or certificate.

Citations: 167K, 546, 549, 551, 552, 555, 556. 207 P. 2d 440, 174 K 213, 213. 255 P. 2d 1015 (recent case). Transferred from section 24-903. For L. 1945, ch. 890, sec. 18 which amends an 1891 act, see sec. 42-308.

Kentucky

1954 Kentucky Acts - Chapter 247, H.B. 497, page 659.

An Act relating to the conservation, development and use of water resources.

Be it enacted by the General Assembly of the Commonwealth of Kentucky.

Section 1. The conservation, development and proper use of the water resources of the commonwealth of Kentucky has become increasingly important as a result of technical advances, agricultural production problems and varied industrial, municipal and recreational uses. Excessive rainfall at certain seasons causes damages from overflowing streams. Prolonged droughts at other seasons curtail industrial, municipal, agricultural and recreational uses of water and threaten the economic well-being of the commonwealth. The advancement of the safety, happiness and the protection of property of the people require that the power inherent in the people be utilized to promote and to regulate the conservation, development and proper use of the water resources. It is hereby declared that the general welfare requires that the water resources of the commonwealth be put to beneficial use to the fullest extent of which they are capable, and that the waste or non-beneficial use of water be prevented, and that the conservation and beneficial use of water be exercised in the interest of the people. The proper investment of public and private funds to promote the conservation and beneficial use of water resources is recognized as being in the public interest and such investments shall be encouraged.

Section 2. Water occurring in any natural stream, natural lake or other natural water body in the commonwealth which may be applied to any useful and beneficial purpose is hereby declared to be a natural resource and public water of the commonwealth and subject to control and regulation for the public welfare. Diffused surface water which flows vagrantly over the surface of the ground shall not be regarded as public water, and the owner of the land on which such water falls or flows shall have the right to its use. Water left standing in natural pools in a natural stream when the natural flow of the stream has ceased shall not be regarded as public waters and the owners of the land contiguous to that water shall have the right to its use for their purpose.

Pollution.

Kentucky Revised Statutes, Chapter XVIII - Public Health, Sec. 220.

Section 220.590 - Policy and purposes: (1) It is hereby declared to be the policy of this Commonwealth to conserve the waters of the Commonwealth for public water supplies, for the propagation of fish and

aquatic life, for fowl, animal wild life and arborous growth, and for agricultural, industrial, recreational and other legitimate uses; to provide a comprehensive program in the public interest for the prevention, abatement and control of pollution; to provide effective means for the execution and enforcement of such program; and to provide for cooperation with agencies of other states or of the Federal Government in carrying out these objectives.

(2) It is the purpose of KRS 220.580 to safeguard from pollution the uncontaminated waters of the commonwealth; to prevent the creation of any new pollution of the waters of the commonwealth; and to abate any existing pollution.

Louisiana

Legislative Council created in 1955 for the purpose of making studies and recommendations on water policy.

See Research Report No. 5, April 7, 1955.

Maine

No statutory provisions on water rights law.

Maryland

1951 Statutes Annotated Code Vol. 2, page 3426.

Water Resources - An. Code, 1939, Art. 96B, sec. 1, 1933, ch. 526, Sec. 1.

666. In order to conserve, protect and utilize the water resources of the State, in accordance with the best interests of the people of Maryland, it is hereby declared to be the policy of the State to control, so far as practicable, the appropriation or use of surface and underground waters of the State. It is also declared to be the policy of the State for the purpose of promoting the public safety and welfare, to control and supervise so far as practicable, the construction, reconstruction and repair of dams, reservoirs and all other waterworks in any of the waters of the State.

Massachusetts

No statutory provisions on water rights law.

Michigan

Legislative Special Interim Committee created in 1954 for the purpose of making studies and recommendations on water policy.

1949 Public Acts No. 117, Section 323.1 creates a Water Resources Commission but pertains to pollution generally of surface and underground waters.

Minnesota

1949 Statutes, page 937.

Chapter 105, 105.38 Declaration of Policy.

In order to conserve and utilize the water resources of the state in the best interest of the people of the state, and for the purpose of promoting the public safety and welfare, it is hereby declared to be the policy of the state (1) that subject to existing rights, all waters in streams and lakes wholly within the state and such portions of all boundary streams and lakes as lie within the state, which are capable of substantial beneficial public use, shall be public waters, and shall be subject to the control of the state, (2) the state, so far as practicable, shall control the appropriation and use of surface and underground waters of the state and (3) the state shall control and supervise, so far as practicable, the construction, reconstruction, repair, removal, or abandonment of dams, reservoirs, and all control structures in any of the public waters of the state.

(1947 c. 142, s.2).

Mississippi

1955 Acts, approved Sept. 28, 1954.

House Bill No. 7.

An act to declare the policy of the state in regard to water in the state, to provide for the preservation of existing rights in the use of water; to provide for the appointment of a commission, to be known as the Mississippi Water Resources Policy Commission, to conduct a study into the matter of implementation of the policy herein declared; to require the commission to report its findings to the next session of the legislature.

Whereas, the use of water for municipal, industrial, agricultural, and all other beneficial purposes is a matter of public interest and public welfare; and

Whereas, continued waste and misuse of ground water may create a critical problem; and

Whereas, the proper use and management of surface waters facilitate and make practicable the conservation of ground water and land in many areas; and

Whereas, the conditions and needs within the State of Mississippi with reference to the availability and use of water are such that the public welfare requires that water be put to the highest beneficial use; and

Whereas, by encouraging sound adjustments in land and water use, and the right combination of structural measures, including but not limited to dams, reservoirs, pumping plants, conduits, ponds, and other structures to permit the proper development, wise use, conservation and protection of surface water, as well as land, the public interest and welfare are served; and

Whereas, the control and development and use of water for all beneficial purposes should be centered in the state which, in the exercise of its police powers, should follow a course which will effectuate full utilization and protection of the water resources of the state;

Now, therefore, be it enacted by the Legislature of the State of Mississippi:

Section 1. Nothing in the preamble shall impair or interfere with the continuance of any existing valid rights to the use of waters, or to interfere with the customary use of water for domestic purposes.

Section 2. There is hereby created a commission of seven (7) members to be known as the Mississippi Water Resources Policy Commission, which shall conduct a study into the matter of implementation by the legislature of a water policy of the state as set forth in section 1. Members of the commission shall be appointed by the governor as follows: one member each congressional district and one member from the state at large. The commission may engage an executive secretary and professional assistance, may authorize travel expenses and may engage such clerical help as it may find to be necessary or desirable; but in no event shall it incur expenses in excess of an amount to be appropriated.

Missouri

No statutory provisions on water rights law, except State Geologist is to make water resource surveys.

Montana

1947 Revised Codes of Montana, amm. Vol. 6, Title 89, Chapter 1, Section 89-101, page 88 - Water Conservation a State Purpose.

It is hereby declared that the public interest, welfare, convenience and necessity require the construction of a system of works; in the manner hereinafter provided, for the conservation, development, storage, distribution and utilization of water. The construction of said system of works, is and is hereby declared to be, a single object; and the construction, operation and maintenance of said system of works, as herein provided for, is hereby declared to be a single object; and the construction, operation and maintenance of said system of works, as herein provided for, is hereby declared to be in all respects for the welfare and benefit of the people of the state, for the improvement of their prosperity and living conditions; and the state water conservation Board hereinafter created shall be regarded as performing a governmental function in carrying out the provisions of this act.

Citations: 47 P. 2d 637, 100 M 415, 420, 116P. 2d 100 T, 100 M 391, 398, 397, 107 M 116, 119. 80 P. 2d 864. 139 F. 2d 998. 112 M 445, 456.

Nebraska

Chapter 46, Article 2, Section 201, 202.

A. Public Rights.

201. Water for irrigation; declared natural want. Water for the purposes of irrigation in the State of Nebraska is hereby declared to be a natural want.

202. Unappropriated water; declared dedicated to Public Use. The water of every natural stream not heretofore appropriated within the State of Nebraska is hereby declared to be the property of the public and is dedicated to the use of the people of the state, subject to appropriation as herein provided.

Citations: Sec. 201, Laws 1895, c. 69, 65, p. 268, R. S. 1913, 3369; Laws 1919, c. 190, tit. VII, art. V, Div. 1, p. 831; C. S. 1922, 8406 C. S. 1929, 46-501, 139 Neb. 460, 138 Neb. 163, 129 Neb. 586, 97 Neb. 139, 71 Neb. 70, 67 Neb. 500.

Sec. 202 - Laws of 1919 c. 190, title VII, art. V, div. 1 & 2, p. 831, 131 Neb. 356, 123 Neb. 588, 120 Neb. 724, 111 Neb. 218, 73 F. 2d. 555.

Nevada

Nevada Compiled Laws, 1929, Vol. 3.

Section 7890. All Water Public Property.

The water of all sources of supply within the boundaries of the state, whether above or beneath the surface of the ground, belongs to the public.

Section 7891. Beneficial Use.

Subject to existing rights, all such water may be appropriated for beneficial use as provided in this act and not otherwise.

Citations: 44 Nev. 418, 195P. 1101, 241 Fed. 382, 896. 300 Fed. 645, 5 Fed. 2d 466.

New Hampshire

New Hampshire Statutes, Vol. 11, page 1116
Chapter 266 - New Hampshire Water Resources Board

1. Declaration of Need. It is declared that there is a state-wide need for the conservation and distribution of water and the regulation of the flow of rivers and streams and that the public interest, welfare, and necessity require the construction of projects for the conservation, development, storage, distribution, and utilization of water, and the corporation authorized hereunder shall be regarded as performing a governmental function in carrying out the provisions hereof. It is further declared that there is a special public need for dams and reservoirs at strategic locations for regulating the flow of rivers and streams to lessen damages resulting from floods and to promote the state's industrial and economic welfare, by enhancing the present and potential water power along the rivers and streams and the construction, maintenance, and operation of such dams and reservoirs within the state is a primary purpose of this chapter.

1935, 121:1. 1937, 118:1. 89-349.

New Jersey

Legislative Commission on Water Supply created March 18, 1955 for the purpose of making studies and recommendations on water policy implementation. New Jersey Joint Resolution No. 3.

New Mexico

1953 New Mexico Statutes, Vol. II, Chapter 75

Section 75-1-1. Natural waters in channel are subject to appropriation - "Watercourse" defined.

All natural waters flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use. A watercourse is hereby defined to be any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and bed with visible evidence of the occasional flow of water.

Constitution, New Mexico, Article 16,

Section 1. All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed.

Section 2. The unappropriated water of every natural stream, perennial or torrential, within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the State. Priority of appropriation shall give the better rights.

Section 3. Beneficial use shall be the basis, the measure and the limit of the right to the use of water.

Citations: 36 N.M. 94, 8 P 2d 1064, 15N.M. 439, 110 P 567, 31 N.M. 521, 247 P 550, 18 N.M. 388, 137 P. 86.

New York

"Temporary State Commission on Irrigation" created on April 25, 1955 for the purpose of making studies and recommendations. The Committee on Natural Resources is making studies on water policy in cooperation with the Commission on irrigation.

North Carolina

Water Resources Advisory Committee created in 1954 to report in 1955 for the purpose of making studies and recommendations on water policy. The 1955 legislature adopted a water policy and created a Water Resources Board.

Section 1. Declaration of Policy. - It is hereby declared that the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water be exercised with the view to the reasonable and beneficial use thereof in the public interest.

Section 2. Purpose of Act. - The purpose of this Act is to provide a State agency to study and gather information concerning the State's water resources; to devise plans for the most beneficial long-range conservation and use of said water resources; to make public information concerning the same; and to prepare and submit to the Governor and the General Assembly recommendations for the improvements in methods of conserving and using said water resources. It is the further purpose of this Act to provide that the aforementioned State agency shall, during periods of water emergency as found to exist pursuant to the provisions of this Act, have sufficient authority to take steps as hereinafter set forth to meet such emergency to the end that the harmful effects of the emergency shall be reasonably minimized.

Section 4. Act to be Administered by Board of Water Commissioners; Composition of Board. - For the administration of this Act, there is hereby created a Board of Water Commissioners of the State of North Carolina to consist of seven members to be appointed by the Governor, at least one of whom shall represent the interests of agriculture, at least one of whom shall represent the interests of the electric power industry, at least one of whom shall represent the interest of other industry, and at least one of whom shall represent the interests of municipalities. Of the members of the board initially appointed by the Governor, two shall serve for terms of two years each, two shall serve for terms of four years each, and three shall serve for terms of six years each.

Thereafter, all appointments shall be for terms of six years. The Governor shall designate a chairman from among the membership of the board and shall, by appointment, fill all vacancies occurring by reason of death, resignation, or other cause.

The following persons shall serve as members of an Advisory Committee which shall act in an advisory capacity to the board: The Commissioner of Agriculture, the Director of the Agricultural Extension Service, the Director of the Department of Conservation and Development, the State Soil Conservationist, the Secretary of the State Board of Health, the Director of the State Recreation Commission, the Executive Secretary of the Stream Sanitation Committee, and the Executive Director of the Wildlife Resources Commission. The Governor shall appoint as members of the Advisory Committee three members of the Senate of the General Assembly, one member of the Advisory Committee who shall represent industry, one member who shall represent the electric power industry, and one member who shall represent municipalities. The members of the Advisory Committee so appointed by the Governor shall serve for terms of two years beginning July 1, 1955.

The Governor shall designate a chairman among the membership of the Advisory Committee and shall, by appointment, fill all vacancies occurring by reason of death, resignation, or otherwise. The Advisory Committee shall meet upon the call of the Chairman of the Board or the Chairman of the Advisory Committee and shall consider such matters as are brought to its attention. The members of the Advisory Committee shall, during the performance of their duties, receive regular State travel expenses.

Section 7. Ordinary Powers and Duties of the Board. - Except as otherwise specified in this Act, the powers and duties of the board shall be as follows:

(a) The board shall carry out a program of planning, research, and education concerning the most beneficial long-range conservation and use of the water resources of the State.

(b) A general inventory of water resources of the State shall be maintained by the board. The Governor may direct any other State agency having information concerning the water resources of the State to make this information available to the board in order to assist it in maintaining this inventory.

(c) The board, based on information available, shall notify any municipality of other governmental unit of potential water shortages or emergencies foreseen by the board affecting the water supply of such municipality or unit together with the board's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or other governmental unit ineligible to receive any emergency diversion of waters authorized by Section 9 of this Act.

(d) The board is authorized, subject to the State Personnel Act and the Executive Budget Act, to employ a full-time executive secretary and such other personnel as may be necessary to carry out the purposes of this Act.

(e) The executive secretary shall serve as administrative officer of the board and shall exercise such administrative powers as are delegated to him by the board. He shall serve at the pleasure of the board.

(f) The board is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the board.

(g) Recognizing the complexity and difficulties attendant upon the recommendation to the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the board shall solicit from the various water interests of the State their suggestions thereon.

- (h) The board may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.
- (i) All recommendations for proposed legislation made by the board shall be available to the public.
- (j) The board shall file with the Governor and the General Assembly a biennial report in which its activities for the preceding two years shall be summarized and which shall contain recommendations for the improvement and methods of conserving and using the State's water resources.
- (k) The board shall adopt such rules and regulations as may be necessary to carry out the purposes of this Act.
- (l) Any member of the board or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.

Section 8. Declaration of Water Emergency. - Upon the request of the governing body of a county, city, or town the board shall conduct an investigation to determine whether the needs of human consumption, necessary sanitation, and public safety require emergency action under Section 9 of this Act. Upon making such determination, the board shall conduct a public hearing on the question of the source of relief water after three days' written notice of such hearing has been given to any persons having the right to the immediate use of water at the point from which such water is proposed to be diverted. After determining the source of such relief water the board shall then notify the Governor and he shall have the authority to declare a water emergency in an area including said county, city, or town and the source or sources of water available for the relief hereinafter provided; provided, however, that no emergency period shall exceed thirty days but the Governor may declare any number of successive emergencies upon request of the board.

Section 9. Water Emergency Powers and Duties of the Board. - Whenever, pursuant to this Act, the Governor has declared the existence of a water emergency within a particular area of the State, the board shall have the following duties and powers to be exercised only within said area and only during such time as the Governor has, pursuant to this Act, designated as the period of emergency.

North Dakota

North Dakota Revised Code of 1943, Vol. 5, Title 61, Chapter 61.

Section 61.0101. Waters of the State; Public Waters.

All waters within the limits of the State from all sources of water supply belong to the public and are subject to appropriation for beneficial use.

Section 61.0102. Right to Use of Water; Basis of: Waters appropriated for Irrigation Purposes: Priority in Time.

Beneficial use shall be the basis, the measure, and the limit of the right to the use of water. All waters appropriated for irrigation purposes shall be appurtenant to specified lands owned by the person claiming the right to use the water, so long as the water can be used beneficially thereon. Priority in time shall give the better right.

Section 61. 0201. Water Conservation, Flood Control, and Abatement of Stream Pollution Declared a Public Purpose.

It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation and control of waters in this state, private or public, navigable or unnavigable, surface, or sub-surface, the control of floods, and the regulations and prevention of water pollution, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigation, construction, maintaining, regulating, supervising, and controlling any system of works involving such a subject matter embraces and concerns a single subject, and that the state water conservation commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.

Ohio

1953 Ohio Title LXI, Chapter 6101.

No special statutory provision on water rights law, except in the Conservancy Act.

Sec. 6101.24 (6828.24). Water rights and uses; power to make regulations and determine rates; determination of basis for assessment of benefits.

The rights of *** landowners, municipal corporations, corporations, and other users of waters to the waters of the conservancy district for domestic use, water supply, industrial purposes, *** water power, or for any other purposes *** extend only to such rights as were owned by them prior to the organization of the district, and to such use as could be made. Wherever the organization of *** or the improvements made by the district make possible a greater, better, or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district.***. Such rights may be leased, sold, or assigned by the district in return for reasonable compensation ***. If a district *** has as one of its purposes the provision of water supply, the person and public corporation assessed for the cost of building or acquiring properties, works, and improvements for such purpose shall have priority in the purchase of the waters made available thereby, and no sale, lease, or assignment shall be made under *** this section which will deprive any such person or public corporation without his or its consent, of the right to purchase and use a share of such water supply proportionate to the assessments imposed upon him or it for water supply purposes.

Where the district is a riparian owner along the streams of the district, it *** has in addition the rights which go with riparian ownership.

All the rights and property of the district in the waters and *** watercourses of the district, and in their uses, shall be exercised in such manner as to promote the welfare of the district, and of all inhabitants thereof, and to promote the safest and most economical and reasonable use of the waters thereof ***, to encourage and promote industries and agriculture, and to pay the cost of the construction and maintenance of the improvement. Charges for such use shall not be greater than are necessary to accomplish these purposes.

Persons or public corporations desiring to secure such use of the waters or *** watercourses of the district, or of the district rights therein, may *** apply to the board of directors of the conservancy district for lease, purchase, or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity of such use, the amount of water desired, and the place of use. In case any party makes greater, better, or more convenient use of the waters of the district without formal application, the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation

the same as though formal application had been made. Where it is not possible *** or reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as *** is determined by the board ***, subject to the approval of the court.

Preference shall be given *** in the following order:

(a) To domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and *** farmyard use, or for watering stock;

*** (B) To supplying water used in processes of manufacture, for the production of steam, for refrigerating, cooling, and condensing, and for maintaining sanitary conditions of stream flow;

*** (C) For irrigation, power development, recreation, fisheries, and for other uses.

The board *** shall not permanently sell, lease, assign, permit, or otherwise part with the control by the district of the use of the waters thereof, and rates for light, power, or other services charged by vendees, assignees, leasees, or licensees of such board *** are subject at all times to revision and control by state law. Assignments, leases, sales, or permissions may be made for periods of not greater than fourteen years. At the termination of the period of such assignments, sales, leases, or permissions, they shall be renewed for a reasonable period not to exceed fourteen years, on the condition that a new determination is made of a reasonable charge therefor, as *** provided *** in this section, unless there are other applications on file, the granting of which would result in filling a greater need or in a more reasonable use. In case such applications are on file, they shall have preference.

The board *** may make regulations for the determination and measurement of the increased, *** better, or more convenient use of, or benefit from the water supply of the district, for *** determining rates of compensation, and for *** securing to all parties interested the greatest and best use of the water thereof.

The board *** may determine the rates of compensation for the greater, better, or more convenient use of, or benefit from, the waters of the district and for the sale of water made available by the works and improvements built or acquired by the district for the purpose of water supply, which rates shall be reasonable, and it may require bond to be give to secure the payment for such use. Upon the determination of any rate, *** the board shall make a report of its determination to the court. The court shall thereupon cause notice by summons or publication to be give to the parties interested, stating that such a determination of rate has been made, that a hearing before the court will

be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be had before the court and objections may be made in the same manner as in case of the appraisal of benefits. Upon the final determination of the matter by the court, the determination of such rates of compensation *** are conclusive and binding for the term and under the conditions specified in the lease or other agreement. In case of failure of any user to pay for use in the manner specified by order of the court, the board may compel payment, and may enjoin further use until such payment is made. The rights under any lease or sale shall not extend to a change of use, or of place, time, or manner of use, except in so far as is specifically stated in the lease or other agreement.

The compensation for greater, better, or more convenient use of, or benefit from, the waters of the district *** may be made by payment according to a unit price per cubic foot of water used, or by a unit price for theoretical *** horsepower developed, or in any other reasonable measurement of value received by reason of the greater, better, or more convenient use of, or benefit from, the waters of the district. All money received as compensation under *** this paragraph shall be added to the funds of the district and used for defraying the expenses thereof.

As a basis for assessment of benefits due to a greater, better, or more convenient use of, or benefit from, the waters of the district, the *** board may *** make a determination *** of the conditions of the water supply and of the *** watercourses of the district as they were before the improvements were made, or as they existed at any subsequent time, and *** it may make a determination of all rights, property, easements, or other interests in the waters, or the *** watercourses of the district, such determination being based upon records of greatest and least flow, upon the evidence of use *** or evidence of legal rights, and upon any other evidence and records which *** are available. Upon the completion of such determination, the *** board shall make *** its report thereon to the court. Thereupon notice shall be given of the pendency of said report and a hearing thereon, which notice and hearing shall conform as nearly as possible to the notice and hearing on appraisals of benefits and of land to be taken, and the same right of appeal *** exists. Upon the determination of the matter by the court, its findings *** are conclusive *** and shall be the basis of any future assessment for the use of the waters of the district, provided that in case any party *** thereafter *** established in court any right or property in the waters of the district of such right, or the failure to adjudicate it, shall not affect the operation of this provision nor the findings of the court thereon in any other particular.

The rights of the district to the waters of the district, or the use thereof, or to the land within the district and owned by it, shall not be lost by the district by prescription or by adverse possession.

Except in the case of benefits derived from the properties, works, and improvements acquired or constructed for the purpose of water supply, the appraisal of benefits made by the board of appraisers of the district shall not include benefits for such greater, better, or more convenient use of, or benefit from, the waters of the district, but the compensation for such use or benefits shall be made according to *** this section.

Oklahoma

· Oklahoma statutes, 1951.

Joint Study Commission created in 1955 for the purpose of making studies and recommendations on water policy.

1951 Oklahoma Statutes Title 82, Chapter 1, Section 1, page 1173.

Beneficial use shall be the basis, the measure and the limit of the right to the use of water, and all water appropriated for irrigation purposes shall be appurtenant to specified lands owned by the person claiming the right to use the water, so long as the water can be beneficially used thereon. Priority in time shall give the better right. Provided, that in all cases of claims to the use of water initiated prior to November 15, 1907, the right shall relate back to the initiation of the claim and beneficial use of such water. All claims to the use of water initiated thereafter shall relate back to the date of receipt of an application therefor in the office of the state engineer, subject to compliance with the provisions of this chapter and the rules and regulations established thereunder.

Citations: 52 Okla 772, 153 P 833, 33 Okla 675, 124 P 1077, 19 Okla 83, 91 P 856, 15 A.L.R. 1227, 56 A.L.R. 277.

Oregon

1953 Water Laws.

Section 540.610. Use as measure of water right; nonuser as abandonment; nonapplication to municipalities; confirmation of rights of municipalities.

(1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use the water appropriated for a period of five successive years, the right to use shall cease, and the failure to use shall be conclusively presumed to be an abandonment of water right. Thereafter the water which was the subject of use under such water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities.

(2) However, this section shall not apply to, or affect, the use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes; nor shall it be so construed as to impair any of the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(3) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population or to secure sufficient water supply in cases of emergency, is expressly confirmed.

Pennsylvania

Pennsylvania Statutes, Title 32, Ch. 8a.

Preamble:

The act of 1939 was preceded by the following Preamble:

"Whereas, an adequate and safe supply of water for the public is a matter of primary concern affecting the life, health and comfort of the people of this Commonwealth; and

"Whereas, the increase of the population makes it necessary that the available supply of water be conserved, controlled, and used equitably for the best interests of all concerned; and

"Whereas, the use of water for the supply of water to the public is the most essential of all public service, vital to life itself; and

"Whereas, the public interest requires that public water supplies be developed not only for present needs but also for developing needs for a reasonable time in the future from and after any original appropriation or acquisition of a source of supply; and

"Whereas, the public interest requires that sources of water supply appropriated or acquired but not used or not reasonably necessary for future needs should be available for appropriation or acquisition by others requiring such sources."

Section 635. Rights not acquired except as provided in act.

No public water supply agency shall hereafter acquire any water rights except as provided in this act¹, and any acquisition of water rights hereafter, except as provided in this act, shall be deemed to be unlawful null and void. 1939, June 24, P.L. 842, Sec. 5.

¹ Sections 631-641 of this title.

Section 632. Acquisition of water rights not followed by actual taking void.

Any acquisition of water rights heretofore acquired by any public water supply agency, which acquisition has not been followed by an actual taking from the source acquired either heretofore or within a period of one year after the effective date of this act¹, is hereby declared null and void and of no effect to the extent required to make water rights from such source available for acquisition under the terms of this act. 1939, June 24, P.L. 842, Sec. 2.

¹ Sections 631-641 of this title.

Section 637. In the case of established conflict of interest, the board, after receipt of an application or at any time, or from time to time, shall have the power to issue, modify or impose conditions in permits or confirmed claims for, or to the acquisition of, water rights theretofore or thereupon issued when deemed necessary by the board in the public interest, and it shall be the duty of the board to issue and it shall issue all such permits and modification and conditioning orders as the public interest shall require.

However, if the board finds that the proposed new source or additional supply will not conflict with the rights to such water or to water rights held by any other public water supply agency which are reasonably necessary for its present purpose or future needs and that the water or the water rights proposed to be required are reasonably necessary for its present purposes and future needs of the public water supply agency making application, that the making of said water or the exercise of said water rights will not interfere with navigation, jeopardize public safety, or cause substantial injury to the Commonwealth, then, and in that case, the Board shall approve the application and shall issue a permit therefor. 1939, June 24, P.L. 842, Sec. 7

Note: The act here referred to seems to be an appropriation act but directed to diversion and use of defined waters by public water supply agencies.

Rhode Island

No statutory provisions for water rights law.

South Carolina

No. 377.

Whereas, the use of water for municipal, industrial, agricultural, and all other beneficial purposes is a matter of public interest and public welfare; and

Whereas, the proper use of surface waters facilitates and makes practicable the conservation of ground water and land in many areas; and

Whereas, the conditions and needs within the State of South Carolina with reference to the availability and use of water are such that the public welfare requires that water be put to the highest beneficial use; and

Whereas, by encouraging sound adjustments in land and water use and the construction of dams, reservoirs, pumping plants, conduits, ponds, and other structures to permit the proper development, wise use, conservation and protection of surface water, as well as land, the public interest and welfare are served; Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina;

Section 1. State policy, use of water. - It is hereby declared to be the policy of the State of South Carolina that control of development and use of water for all beneficial purposes should be in the State, which, in the exercise of its policy powers, should follow a course which will effectuate full utilization and protection of the water resources of the State.

South Dakota

Chapter 430 (H.B. 514), Amending laws relating to surface waters and providing for a water resources commission.

Be it enacted by the Legislature of the State of South Dakota:

Section 1. That SDC 61.0101 to 61.0153, inclusive, as amended by SDC Supp. 61.0102, 61.0109 and 61.0133-1, be, and the same are hereby, repealed, and that in lieu thereof the following numbered sections, reading as follows, be substituted:

61.0101 General State Policy. It is hereby declared:

(1) That because of conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this state is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of diversion of water;

(2) That all water within the state is the property of the people of the state, but the right to the use of water may be acquired by appropriation in the manner provided by law;

(3) That the people of the state have a paramount interest in the use of all the water of the state and that the state shall determine what water of the state, surface and underground, can be converted to public use or controlled for public protection;

(4) That the protection of the public interest in the development of the water resources of the state is of vital concern to the people of the state and that the state shall determine in what way the water of the state, both surface and underground, should be developed for the greatest public benefit;

(5) That it is the established policy of this state:

- (a) That the use of water for domestic purpose is the highest use of water; and takes precedence over all appropriative rights
- (b) That the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses, but that no municipality shall acquire or hold any right to waste any water, or to use water for other than muni-

cipal purposes, or to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by other subject to the rights of the municipality to apply such water to municipal uses as and when necessity therefor exists.

Tennessee

No statutory provisions on water rights law. Commission to study water policies established by 1955 legislature.

Texas

1948 Vernon's Texas Statutes - Title 128, Chapter 1, Article 7466, p. 2090. Public Rights.

The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and floodwaters, the waters of its rivers and streams for irrigation, power and all other useful purposes; the reclamation and drainage of its overflowed lands, and other lands needing drainage; the conservation and development of its forest, water and hydro-electric power; the navigation of its inland and coastal water, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties.

Acts 1895, p. 21; G.L. Vol. 10, p. 751; Acts 1913 p. 358; Acts 1917, p. 211; Acts 1921, p. 233. This is essentially the wording of the Texas Constitution Article XVI, Section 59a.

Utah

Constitution of Utah, art. XVII, Sec. 1 - 1953 Utah Code, Vol. 1, p. 296. Water Rights Section 1.

All existing rights to the use of any of the waters in this State for any useful or beneficial purpose, are hereby recognized and confirmed.

Utah Code Ann. 1953, Vol. 7, Title 73, Chapter 1, Section 73-1-1. Water declared property of public.

All waters in this State, whether above or under the ground, are hereby declared to be the property of the public, subject to all existing rights to the use thereof.

Section 73-1-3. Beneficial use basis of right use.

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this State.

Citations: 289 P. 116; 66 P. 2d 894; 40 P 2d 755; 128 P. 2d 277; 176 P. 2d 822, 890; 136 P. 2d 957, 962; 211 P. 957; 171 P. 2d 401; 186 P. 2d 588; 116 F. 2d 604; 61 P. 2d 605; 203 P. 2d 922.

Vermont

Vermont Statutes, 1947, Title 29, Chapter 276, Section 2699. Policy.

It is hereby declared to be the policy of the state that the water resources of the state shall be protected, regulated and, where necessary, controlled under authority of the state in the public interest and to promote the general welfare, and it is further declared that said policy necessitates the creation of a state agency which shall be known as the Vermont state water conservation board.

1947, No. 83, Sec. 1.

Virginia

Virginia Statutes 1954 Reg. Session, Chapter 330, Section 2.

(a) Subject waters are a natural resource which should be regulated by the State.

(b) The regulation, control, development and use of waters for all purposes beneficial to the public are within the jurisdiction of the State which in the exercise of its police powers may establish measures to effectuate the proper and comprehensive utilization and protection of such waters.

(c) The changing wants and needs of the people of the State may require the water resources of the State to be put to uses beneficial to the public to the extent of which they are reasonably capable; the waste on unreasonable use or unreasonable method of use of water should be prevented; and the conservation of such water is to be exercised with a view to the welfare of the people of the State and their interest in the reasonable and beneficial use thereof.

(d) The public welfare and interest of the people of the State requires the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby.

(e) The right to the use of water or to the flow of water in or from any natural stream, lake or other watercourse in this State is and shall be limited to such water as may reasonably be required for the beneficial use of the public to be served; such right shall not extend to the waste or unreasonable use or unreasonable method of use of such water.

Note: There are statements of water policy in the Virginia Water Power Act and The Virginia Water Control Act (Pollution abatement).

Washington

Title 90, Chapters 90.04, Section 90.04.020. Application of water rights.

The power of the State to regulate and control the waters within the state shall be exercised as hereinafter in this title provided. Subject to existing rights, all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be acquired only by appropriation for a beneficial use and as provided in this title. As between appropriations, the first in time shall be the first in right. Nothing in this title shall lessen, enlarge, or modify the rights of a riparian owner existing as of June 6, 1917, or any right however acquired existing as of that date, except that they shall be subject to condemnation for public use, and the amount and priority thereof may be determined as hereinafter provided.

West Virginia

No statutory provisions on water rights law.

Wisconsin

Joint Resolution 90 created Legislative Council in 1955 for the purpose of making studies and recommendations on water policy.

1947 Wisconsin statutes, sections 31.14 to 31.26 pertain to diversion of surplus waters from canals and navigable streams.

Sections 94.26 to 94.32, inclusive, pertain to cranberry culture.

Wyoming

Wyoming Constitution, Article 8, Section 1.

Water is state property - The water of all natural streams, springs, lakes or other collections of still water, within the boundaries of the state, are hereby declared to be the property of the state.

In General.

Waters within the state belong to the state, Northside Canal Co. v. State Board of Equalization, 8 Fed. (2d) 739.

Only waters of natural streams, springs or lakes are subject to appropriation. Binning v. Miller, 55 Wyo. 451, 102 Pac. (2d) 54.

Appropriation, right of.

State ownership of the waters is subject to a trust, the right of appropriation by any one for beneficial use. Willey v. Decker, 11 Wyo. 496, 73 Pac. 210, 100 Am. St. 939.

Appropriation permit and application therefor to state engineer was condition precedent to lawful appropriation, notwithstanding this article does not require such permit. Wyoming Hereford Ranch v. Hammond Packing Co., 33 Wyo. 14, 236 Pac. 764.

Constitutionality.

This section is not in conflict with the federal constitution as directing those who had appropriated parts of waters prior to the adoption of the constitution of their property, since they never acquired any title to the water in the natural channels before it was diverted into the private ditches or laterals, and only the running water in the natural channel was appropriated to the state. Farm Inv. Co. v. Carpenter, 9 Wyo. 110, 61 Pac. 258, 50 L.R.A. 747, 87 Am. St. 918.

Dam.

A dam more than ten feet high may be abated as nuisance though it is not in natural stream, but only to extent that it is above ten feet high and without inflicting unnecessary injury. State v. Hiber, 48 Wyo. 172, 44 Pac. (2d) 1005.

Natural Stream.

Fact that, before irrigation of lands under a federal reclamation project commenced, a wash or channel within the lands covered by the project carried water only as the run-off from rain or melting snow and was generally dry during all the irrigating season showed that the wash was not a natural stream within this section. *United States v. Ide*, 277 Fed. 373.

Where draw was dry most of the time, was covered with grass, had no banks and evidence showed no natural outlet, evidence failed to sustain states contention that draw was natural stream. *State v. Hiber*, 48 Wyo. 172, 44 Pac. (2d) 1005.

Where during course of 30 years seepage water flowing down a draw finally made a regular, natural stream with definite channels and basins, waters thereof are subject to appropriation. *Binning v. Miller*, 55 Wyo. 451, 102 Pac. (2d) 54.

Priority of Rights.

A priority of rights in water includes the quality as well as the quantity so that an oil producer has no right to deteriorate the quality of the water in a stream as against persons lower down on the stream having priority. *Sussex Land & Live Stock Co. v Midwest Refining Co.*, 294 Fed. 597, 34 A.L.R. 249.

Private Waters.

An attempted appropriation of waste and seepage waters, being private waters, is void. *Binning v. Miller* 55 Wyo. 451, 102 Pac (2d) 54.

Seepage and waste water is private water so long as it is on the lands from which it originates and such water cannot be appropriated by adjoining landowners. *Binning v. Miller*, 55 Wyo. 451, 102 Pac. (2d) 54.

Supervision and Control.

The legislature has power to authorize by statute the supervision and control of the appropriation and distribution of the public waters of the state by administrative officers, pursuant to adjudicated priorities. *Hamp v. State*, 19 Wyo. 377, 118 Pac. 653.

Title.

Title to water in natural streams in Wyoming is in state, but water is subject to withdrawal or appropriation for irrigation or other beneficial use. Mitchell Irr. Dist. v. Sharp, 121 Fed. (2) 954.

Wyoming Statutes - Vol. 4 and 5.

Section 71-218. Diversion of surplus water. - Surplus water, as herein defined, may be diverted by anyone having either an adjudicated appropriation or a permit granting a right to divert and take from said stream and/or the tributaries a quantity of water for beneficial use. (Laws 1945, ch. 152, sec. 3).

Section 71-219. Rights to use of surplus water. - A right to the use of surplus water as herein defined in the amount of one (1) cubic foot of water per second for each 70 acres of land having an adjudicated water right or a water right under permit is hereby adjudicated to attach to all original direct flow water rights, and only on lands described in adjudicated appropriations as of record in the office of the State Board of Control or under valid permits or filings as of record in the office of the State Engineer. The rights so adjudicated shall bear date of priority as of March 1, 1945. Rights unadjudicated shall acquire the surplus right as the original is perfected.

Any permits issued or water rights granted in the State of Wyoming after March 1, 1945 shall be subject to the adjudication of surplus water as provided herein (laws 1945, ch. 153, sec. 4).

